

STATE OF MICHIGAN
COURT OF APPEALS

JOHNNIE McKINNEY and BARBARA
McKINNEY,

UNPUBLISHED
December 2, 2003

Plaintiffs-Appellants,

v

No. 241100
Roscommon Circuit Court
LC No. 01-722676-CH

KAREN SUE SHEPHERD,

Defendant-Appellee.

Before: Murray, P.J. and Gage and Kelly, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(8). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs brought this action for fraud and silent fraud, seeking rescission of their purchase of a home from defendant. Plaintiffs asserted that defendant made misrepresentations about the availability of a boat slip and the proximity of over the road vehicle (ORV) trails. The allegation of silent fraud concerned defendant's failure to disclose her involvement in litigation concerning the expansion of the number of mooring spaces.

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine if the plaintiff has stated a claim on which relief may be granted. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Appellate review of the decision on a motion for summary disposition is de novo. *Id.*

The elements of common law fraud are: (1) that the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, she knew it was false; (4) the defendant made the representation with the intention that the plaintiff would act on it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. *M & D, Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998). In order to prove a claim of silent fraud, a plaintiff must show that a false or misleading representation was made, and that there was a legal or equitable duty of disclosure. *Id.* at 31.

Plaintiffs assert that defendant's verbal representations were fraudulent, and grounds for rescission of the sale. However, the sales agreement contained an integration clause providing

that no promises have been made other than those that are in writing and signed by all parties involved. In the context of an integration clause, parole evidence is admissible to show fraud when that fraud could invalidate the merger clause. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 503; 579 NW2d 411 (1998). Here, the merger clause made it unreasonable for plaintiffs to rely on any representations not included in the purchase agreement, and the fraud claim is not the type of claim that could invalidate the contract. *Id.* at 504-505. Where there was no duty of disclosure, plaintiffs could not maintain a claim for silent fraud.

Affirmed.

/s/ Christopher M. Murray
/s/ Hilda R. Gage
/s/ Kirsten Frank Kelly